

## CONTRACT FOR PROJECT MANAGEMENT SERVICES

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between

the \_\_\_\_\_, \_\_\_\_\_

(Owner)

(street)

\_\_\_\_\_, **Massachusetts**, \_\_\_\_\_

(City)

(State)

(Zip Code)

hereinafter called "the Owner" and \_\_\_\_\_

(Owner's Project Manager)

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(street) (city) (State) (Zip Code)  
hereinafter called the "Owner's Project Manager" to provide the Project Management services required to complete the Basic and Extra Services described herein at \_\_\_\_\_

(name/description of Project)

For the performance of all services required under this Contract, and excluding those services specified under Articles 8 and 9, the Owner's Project Manager shall be compensated by the Owner as follows and in accordance with the Payment Schedule included as Attachment A:

Not-to-Exceed Fee for Basic Services: \_\_\_\_\_

***\$[insert total fee amount]***

IN WITNESS WHEREOF, the Owner and the Owner's Project Manager have caused this Contract to be executed by their respective authorized officers.

OWNER

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature and seal)

Date \_\_\_\_\_

OWNER'S PROJECT MANAGER

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature and seal)

Date \_\_\_\_\_

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## **ARTICLE 1: DEFINITIONS**

**APPROVAL** -- a written communication from the Owner approving either the work of the current Project phase and authorizing the Designer and/or Owner's Project Manager to proceed to the next Project phase or the scope and compensation for either Extra Services or Reimbursable Expenses. The Approval may include the approval of compensation, the Construction Budget, and the time required for submission.

**ARCHITECT/ENGINEER** -- herein also referred to as the DESIGNER -- the person or firm with whom the Owner has contracted to perform the professional Designer Services for this Project.

**AUTHORITY** -- Massachusetts School Building Authority or its authorized representative.

**BASIC SERVICES** -- the minimum scope of services to be provided by the Owner's Project Manager under this Contract.

**CONTRACT** -- this Contract, inclusive of all Exhibits, between the Owner and the Owner's Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

**CONTRACTOR or GENERAL CONTRACTOR** -- the person or firm with whom the Owner has contracted to perform the construction for this Project.

**DESIGNER SERVICES** -- the services to be performed by the Designer and its sub-consultants or its subcontractors for this Project.

**EXTRA SERVICES** -- services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services.

**FEE FOR BASIC SERVICES** -- the fee to be paid to the Owner's Project Manager for satisfactorily performing, in the Owner's sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Designer is entitled pursuant to Articles 6 and 7.

**GENERAL LAWS** --the Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

**GUIDELINES AND STANDARDS** -- Documents published by the Authority including regulations and procedures that supplement the tasks of Owner's Project Managers contracting with Owners for projects funded by the Authority.

**OWNER** -- the entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property and is responsible for administering this Contract.

**OWNER'S PROJECT MANAGER** -- the person or firm identified as such on page one of this Contract performing the professional Project Management Services under this Contract.

**PRINCIPALS** -- the owners and/or officers of the Owner's Project Manager who are actively involved in the management of the project.

**PROJECT** -- the construction or modernization work described on the cover page of the Contract for Project Management Services and as further described in this Contract.

**PROJECT DIRECTOR** -- the employee of the Owner's Project Manager meeting the requirements of Article 4.8 who has been designated in writing by the Owner's Project Manager as its authorized

representative and shall be the person who shall oversee the project management services provided under this Contract.

**SUBCONTRACTOR** -- any individual, company, firm, or business having a direct contractual relationship with the Project Manager, who provides services on the Project.

## **ARTICLE 2: RELATIONSHIP OF THE PARTIES**

- 2.1 The Owner's Project Manager shall act as an agent of the Owner in providing the services required under this Contract.
- 2.2 The Owner's Project Manager warrants to the Owner that it shall perform its services hereunder in a manner consistent with that degree of skill and care ordinarily exercised by similarly situated members of Owner's Project Manager's profession on projects of similar size, scope and complexity as is involved on the Project.
- 2.3 Nothing in this Contract shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the Contractor or the Designer. The Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures and for safety precautions and programs in connection with the Project and for performing in accordance with the contract between the Owner and Contractor. The Designer is solely responsible for the design requirements and design criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be entitled to rely upon the Designer and Contractor for the proper performance of their obligations pursuant to their respective contracts with the Owner.

## **ARTICLE 3: RESPONSIBILITIES OF THE OWNER**

3.1 The Owner shall administer the Contract to ensure that the results meet the Owner's needs, conform to the Guidelines and Standards supplied by the Authority, and satisfy the Project goals. The Owner shall provide direct oversight of the Owner's Project Manager's work.

### **3.2 Actions by the Owner**

3.2.1 The Owner shall render all approvals required by this Contract in writing to the Owner's Project Manager, or the Owner shall notify the Owner's Project Manager in writing why such approvals are being withheld.

3.2.2 The Owner shall not unreasonably withhold any approval, acceptance, or consent required under this Contract.

3.2.3 The Owner shall designate an individual or individuals who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day to day communication between the Owner and the Owner's Project Manager.

### **3.3 Payments to Owner's Project Manager**

3.3.1 The Owner shall make payments to the Owner's Project Manager as provided in Articles 6, 7, and 8.

## **ARTICLE 4: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER**

### **4.1 Basic Services**

4.1.1 The Owner's Project Manager shall provide project management services to facilitate, coordinate and manage the Project and to monitor procurement procedures, design, construction and other related activities for conformance with the Massachusetts General Laws and the Owner's established schedule and budget, as approved by the Authority. Services shall continue through substantial use and occupancy by the Owner, project closeout and final auditing as conducted by the Authority.

4.1.2 The Owner's Project Manager, as the Owner's agent, shall serve as an advisor and representative of the Owner for the Project, prepare agendas for and attend building committee meetings, attend meetings with other representatives of the Owner, municipal administration and school department, and attend neighborhood meetings relating to the Project, and participate as a member of the Owner's Prequalification Committee as applicable. The Owner's Project Manager shall take and distribute minutes of these meetings.

4.1.3 The Owner's Project Manager shall assist the Owner in the preparation of application material, requests for reimbursement, and other documentation to be submitted to the Authority.

4.1.4 The Owner's Project Manager shall monitor and coordinate the technical accuracy, efficiency, coordination, and cost-effectiveness of all designs, drawings, reports, estimates and other work furnished by the Designer.

4.1.5 The Owner's Project Manager shall promptly review all Designer submissions and shall meet with the Designer to discuss those submissions. Upon completion of its review, the Owner's Project Manager shall recommend that the Owner: 1) approve the submission as made; 2) approve that part of the submission that is acceptable and reject the remainder; 3) reject the submission; or 4) require the Designer to submit additional information or details in support of its submission.

4.1.6 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, General Contractor, equipment vendors and all other prime contractors and suppliers and make recommendations to the Owner relative to amounts due.

4.1.7 The Owner's Project Manager shall review, document and make recommendations to the Owner relative to all claims for additional compensation by the Designer, Contractor and all suppliers and vendors.

### **4.2 Quality and Standards**

4.2.1 The Owner's Project Manager shall complete the services required under this Contract in a prompt and continuous manner.

4.2.2 The Owner's Project Manager services shall be performed in conformance with applicable federal, state, and local laws, ordinances and regulations.

### **4.3 Project Budget**

4.3.1 The Owner's Project Manager shall prepare a detailed baseline Construction Budget, in a form acceptable to the Owner and the Authority, which will serve as the project control budget against which all Designer estimates and contractor bids will be measured.

4.3.2 The Owner's Project Manager shall compare the Designer's estimate at each Designer phase submission with the detailed Construction Budget.

4.3.3 In the event the cost as estimated by the Designer exceeds the Construction Budget, the Owner's Project Manager shall consult with the Designer and recommend to the Owner appropriate revisions to the scope of work or the Construction Budget.

#### 4.4 Project Schedule

4.4.1 The Owner's Project Manager shall prepare a baseline Master Project Schedule for the design, bid and award, construction and occupancy of the Project, in a form acceptable to the Owner and the Authority, which will serve as a project control schedule against which Project progress will be measured.

4.4.2 The Owner's Project Manager shall assess the actual progress of the project relative to the baseline Project Schedule on a monthly basis and update the baseline Master Project Schedule

4.4.3 In the event actual progress of the Project varies from the baseline Master Project Schedule, the Owner's Project Manager shall consult with the Designer and the Contractor and make appropriate recommendations to the Owner relative to actions that should be taken by the Designer or the Contractor to achieve the baseline Master Project Schedule forecasts or revisions that should be made to the Project Schedule.

#### 4.5 Performance Monitoring

4.5.1 The Owner's Project Manager shall monitor the performance of the Designer, General Contractor and any other consultant working for the Owner on the Project with respect to timely performance in accordance with the Project schedule and monitor in general the quality of services and workmanship and shall recommend courses of action to the Owner when respective contractual requirements are not being fulfilled.

4.5.2 The Owner's Project Manager shall report to the Owner any act or inaction in connection with the Owner's Project Manager believes creates a health or safety risk.

#### 4.6 Project Records and Reports

4.6.1 The Owner's Project Manager shall maintain a complete project file including, but not necessarily limited to, a copy of the executed Owner-Contractor Agreement including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings and schedules, requests for information, change orders, change directives and meeting minutes.

4.6.2 The Owner's Project Manager shall submit monthly written progress reports to the Owner providing the following information: the progress of the entire Project in comparison to the Project schedule showing percentages of completion of design and construction, a financial report showing an updated project budget and actual expenses incurred to date, progress photographs, Change Orders, potential Change Orders, and any other issues that may result in additional time and/or additional cost to the Project.

#### 4.7 Ownership of Documents

4.7.1 All documents, including but not necessarily limited to, studies, designs, drawings, specifications, materials, and submissions prepared under this Contract shall be the property of the Owner, and at the completion or termination of the Owner's Project Manager's services, original documents shall be promptly turned over to the Owner. The Owner shall have all right, title and interest in such submissions, including any rights under copyright law, whether express or implied.

#### 4.8 Massachusetts School Building Authority

4.7.1 The Owner's Project Manager shall comply with the terms and conditions of the Project Funding Agreement executed between the Owner and the Authority and any or all administrative directives issued by the Authority now in effect or hereafter promulgated during the term of this Contract so long as the foregoing do not materially impact the Owner's Project Manager's obligations and responsibilities hereunder.

#### 4.9 Project Director

4.9.1 The Owner's Project Manager shall designate an individual as its Project Director, subject to the approval of the Owner and the Authority. Such Project Director shall be a person who is registered by the commonwealth as an architect or professional engineer and who has at least 5 years experience in the construction and supervision of construction of buildings for public awarding authorities or a person, if not registered as an architect or professional engineer, who has at least 7 years experience in the construction and supervision of construction of buildings for public awarding authorities pursuant to the requirements M.G.L. c.149 §44A½ for an "owner's project manager".

4.9.2 Selection of the Project Director shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Project Manager to replace the Project Director at any time during the course of the Project.

4.9.3 The Project Director shall not be removed or replaced without the written approval of the Owner and the Authority.

### **ARTICLE 5: SUBCONTRACTORS**

5.1 The Owner's Project Manager may employ Subcontractors, subject to the prior written approval of the Owner, in order to perform services under this Contract. The employment of Subcontractors shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract.

5.2 When the Owner's Project Manager receives payment from the Owner the Owner's Project Manager shall promptly make payment to each Subcontractor whose work was included in the work for which such payment was received. The Owner shall have the contractual right to investigate any breach of a subcontract and to initiate corrective measures it determines are necessary and in the best interest of the Owner and the Authority.

### **ARTICLE 6: COMPENSATION**

6.1 For the performance of all services required in this Contract and excluding those services specified under Articles 8 and 9, the Owner's Project Manager shall be compensated by the Owner in the amount

specified on page one of this Contract as the Not-to-Exceed Fee for Basic Services and payment of such compensation shall be made monthly according to the Payment Schedule included as Attachment A.

6.2 The fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, transportation, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include the costs of (a) rebidding of the general bid if due to the fault of the Owner's Project Manager, and (b) assisting the Authority in litigation or resolution of claims arising out of the Designer Contract and the Construction Contract if such litigation or claims are due to the fault of the Owner's Project Manager.

6.3 The Owner's Project Manager shall submit invoices for payment to the Owner on a monthly basis and otherwise in accordance with the Payment Schedule included as Attachment A. The Owner shall make payments to the Owner's Project Manager within 30 days of the Owner's approval of the invoice.

6.4 Final Installment: The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less any retainage and less previous payments, upon acceptance by the Owner of the Certificate of Final Completion and submission of Designer and Contractor evaluations, subject to approval by the Authority.

## **ARTICLE 7: BASIC SERVICES**

7.1 The Owner's Project Manager shall perform as the Basic Services under this Contract those services which are set forth in Article 4. In addition to the services set forth in Article 4, the Basic Services to be performed by the Owner's Project Manager shall include the following:

### **7.2 Pre-Design**

7.2.1 During the Pre-Design phase, the Owner's Project Manager shall, generally, gather information required to familiarize themselves with the project and the participants that must be communicated with during the design process. The Owner's Project Manager shall provide advice, consultation and guidance to the Owner relative to:

- a. Preparation of the project scope, budget and schedule;
- b. Preparation of designer selection materials;
- c. Preparation and negotiation of designer services contracts;
- d. Selection of designers and other consultants in accordance with MGL c.7 §38A½ including execution of contracts and maintenance and tracking of insurance certificates;
- e. Establish design criteria;
- f. Site selection;

7.2.2 Along with the Designer, the Owner's Project Manager shall determine the need for and assist in the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects, etc.

7.2.3 Meet with the Owner, Designer, Authority and other project participants as necessary.



### 7.3 Schematic Design

7.3.1 During Schematic Design, the Owner's Project Manager shall monitor the activities and responsibilities of the Designer in development of the scope, schedule and budget including the review of the Designer's preliminary drawings as required to generally describe the scope of work for the project. The Owner's Project Manager shall:

- a. Prepare independent construction cost estimates for comparison with the designer's cost estimates.
- b. Provide advice, consultation and guidance to the Owner relative to value engineering recommendations.
- c. Work with the Owner and Designer to update the project schedule.

7.3.2 To the extent not performed during the Pre-Design Phase, along with the Designer, the Owner's Project Manager shall determine the need for and assist in the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects, etc.

7.3.3 The Owner's Project Manager shall monitor the status of the design contract including monitoring the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the designer's contract with the Owner are not being fulfilled.

7.3.4 Meet with the Owner, Designer and other project participants as necessary.

### 7.4 Design Development

7.4.1 During Design Development, the Owner's Project Manager shall continue to oversee the activities and responsibilities of the Designer in the further development of the scope, schedule and budget including a general review of the Designer's detailed scaled plans, elevations and sections of all aspects of the design. The Owner's Project Manager shall:

- a. Prepare independent construction cost estimates for comparison with the Designer's cost estimates.
- b. Provide advice, consultation and guidance to the Owner relative to value engineering recommendations.
- c. Work with the Owner and Designer to update the construction budget and schedule.

7.4.2 The Owner's Project Manager shall monitor the schedule of the Designer, provide review and comment of designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner are not being fulfilled.

7.4.3 Meet with the Owner, Designer, the Authority and other project participants as necessary.

### 7.5 Construction Documents

7.5.1 During this phase of the Project, the Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the preparation of complete construction specifications and

drawings in accordance with the Owner-Designer agreement. The Owner's Project Manager shall:

- a. Prepare independent construction cost estimates for comparison with the Designer's cost estimates.
- b. Provide advice, consultation and guidance to the Owner relative to value engineering recommendations.
- c. Work with the Owner and Designer to update the construction budget and schedule.

7.5.2 Provide advice, consultation and guidance to the Owner and the Designer relative to general contractor and subcontractor prequalification requirements pursuant to MGL c.149 §44D½ and §44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.

7.5.3 Along with the Designer, meet with local building officials to review the construction documents and assist the Owner in obtaining all final waivers, approvals and permits, including the building permit.

7.5.4 The Owner's Project Manager shall monitor the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner are not being fulfilled.

7.5.5 Meet with the Owner, Designer, the Authority, and other project participants as necessary.

## 7.6 Bidding

7.6.1 During the Bidding phase of the Project, the Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the advertisement, distribution of bidding documents and solicitation of public bids in accordance with MGL c.149 §§44A through 44J and other public construction-related statutes. The Owner's Project Manager shall:

- a. Administer general contractor and subcontractor prequalification requirements pursuant to MGL c.149 §44D½ and §44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.
- b. Attend and, if directed by the Owner, conduct all pre-bid conferences and meetings.
- c. Attend and, if directed by the Owner, conduct all sub-bid and general bid openings.
- d. Review all sub-bids and general bids for responsiveness, bidder eligibility, completeness, accuracy and price and make recommendations to the Owner relative to their acceptance and determination of bidder responsibility.
- e. Review alternates and make written recommendations as to their acceptance.

7.6.2 If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, consult with the Designer and make recommendations to the Owner relative to bringing the Project within budget.

7.6.3 Make recommendations to the Owner relative to the negotiation and award of a construction contract.

## 7.7 Construction

7.7.1 During this phase of the Project, the Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the construction contract administration and in the construction of the Project.

7.7.2 Assist the Owner in the preparation and execution of the Owner-Contractor Agreement. Obtain from the Contractor performance and payment bonds, insurance certificates, etc. required for contract execution.

7.7.3 Assist the Owner and the Designer in preparing and sending the Contractor Notice to Proceed.

7.7.4 Provide the Contractor with required copies of Construction Contract Documents.

7.7.5 Monitor the Designer's administration of the Owner-Contractor Agreement including processing of submittals, issuance of timely decisions and directives and assuring each consultant or subcontractor to the Designer make visits to the Project as necessary during the time that construction is occurring on the major portion of the work to which the consultant's services relate. Make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer in the Designer's contract with the Owner are not being fulfilled.

7.7.6 Provide a full-time (40 hours per week minimum) on-site Project Representative, who shall be dedicated exclusively to the Project, either as an employee of the Owner's Project Manager or as a subcontractor to the Owner's Project Manager, to monitor the quality and progress of construction and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Owner-Contractor Agreement are not being fulfilled.

- a. Selection of the Project Representative shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.
- b. Unless otherwise directed, the Project Representative shall be present at all times when the Contractor is conducting operations at the site starting from within two weeks of issuance by the Owner of a Notice to Proceed to the Contractor and continuing until issuance to the Contractor of a Certificate of Substantial Completion by the Owner and thereafter on an as needed basis until issuance to the Contractor of a Certificate of Final Completion by the Owner.
- c. The Project Representative shall keep a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to the site, safety status of the project, equipment in use or being installed, work accomplished, problems encountered and other similar relevant data as the Owner may require.
- d. The Project Representative shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.
- e. The Owner's Project Manager shall furnish weekly to the Designer and the Owner a copy of the Project Representative's daily log and a summary of the work performance each week.

7.7.7 Attending weekly job meetings at the Project to observe the quality and progress of the work.

7.7.8 Assist the Designer in preparing proposal requests and monitor and review proposed change orders, recommending appropriate action.

7.7.9 Review and recommend approval of the General Contractor's payment requisitions, including verification of the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the Construction Contract.

7.7.10 Provide advice, consultation and guidance to the Owner in the resolution of disputes between the Contractor and the Designer.

7.7.11 Monitor the Contractor's compliance with Massachusetts prevailing wage requirements pursuant to M.G.L. c.149 §§26 to 27H inclusive including assisting the Owner in cataloging and filing payroll affidavits.

7.7.12 Oversee and monitor the Designer's and Contractor's compliance with MBE/WBE requirements.

7.7.13 Monitor the Contractor's compliance with the construction schedule and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.

7.7.14 Oversee and monitor the procurement of furniture, fixtures and equipment that is not included in the construction contract.

7.7.15 Nothing herein shall be construed as placing any responsibility on the Owner's Project Manager for construction means, methods, techniques, sequences or procedures.

#### 7.8 Completion

7.8.1 During this phase of the Project, the Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out and commissioning of the Project.

7.8.2 The Owner's Project Manager shall assist in securing and review and recommend approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, as-built drawings, operations and maintenance manuals, warranties and guarantees.

7.8.3 The Owner's Project Manager shall make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner and the requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.

#### 7.9 Evaluation of Designer and Contractor

7.9.1 As the Owner's agent, the Owner's Project Manager shall provide written evaluations of the Designer(s) pursuant to M.G. L. Chapter 7 Section 38E and the Contractor(s) pursuant to M.G.L. Chapter 149 Section 44D.

### **ARTICLE 8: EXTRA SERVICES**

#### 8.1 General

8.1.1 Extra Services are those services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and are paid for separately.

8.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Owner in writing prior to the performance of Extra Services.

8.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment A.

8.2 Unless specifically indicated otherwise and with the prior written approval of the Owner, the Owner's Project Manager shall perform any of the following services as Extra Services:

8.2.1 preparing special studies, reports, or applications at the written direction of the Owner, other than those specifically required herein as part of Basic Services;

8.2.2 assisting in the appeals process of permitting boards or commissions;

8.2.3 rebidding of the general bid if not the fault of the Owner's Project Manager;

8.2.4 furnishing services in connection with a bid protest filed in court or with the office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;

8.2.5 furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;

8.2.6 providing consultation concerning replacement of any work damaged by fire, flood, abnormal weather or other similar cause, but not the result of errors, omissions, negligence, or means and methods employed by the General Contractor or a Subcontractor during construction; and

8.2.7 assisting the Owner in litigation, claims resolution or non-binding mediation arising out of the Designer Contract and the Construction Contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager.

8.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of extra services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

## **ARTICLE 9: REIMBURSABLE EXPENSES**

9.1 For coordination and responsibility for the work described in the following paragraphs 9.1.1 and 9.1.2, the Owner's Project Manager shall be reimbursed its actual costs, supported by invoices or receipts. The following are reimbursable expenses:

9.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as extraordinary copying or printing, filing fees, and permit fees that are normally paid by the Owner.

9.1.2 Any other specially authorized reimbursement deemed essential by the Owner, in the Owner's sole discretion, in writing.

9.2 Non-Reimbursable Items: The Authority shall not reimburse the Owner's Project Manager or its Subcontractors for travel expenses, sustenance, telephone, postage and delivery expenses, or cost estimating unless specifically required to elsewhere in this Contract.

9.3 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of sub-contractors hired to perform Basic Services under this Contract. If a Subcontractor hired to perform Basic Services performs Extra Services approved by the Owner, compensation for such Extra Services shall be made under Article 8.

## **ARTICLE 10: RELEASE AND DISCHARGE**

10.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 6 or Article 11 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and the Authority and their employees and agents, from all claims of the Owner's Project Manager and its Subcontractors for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Owner and Authority with, or prior to, the last invoice.

## **ARTICLE 11: ASSIGNMENT, SUSPENSION, TERMINATION**

### **11.1 Assignment:**

11.1.1 If the Owner's Project Manager assigns or transfers any part of its services or obligations under this Contract (other than as specified in Article 5), it must obtain the prior written approval of the Owner and the Authority. Likewise, any successor to the Owner's Project Manager must first be approved by the Owner and the Authority before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.

### **11.2 Suspension**

11.2.1 The Owner may, at any time, upon fifteen (15) days written notice to the Owner's Project Manager, suspend this Contract. If the Owner provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

### **11.3 Termination**

11.3.1 By written notice to the Owner's Project Manager, the Owner may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work. If such termination is for cause then no further payment shall be due to the Owner's Project Manager.

11.3.2 By written notice to the Owner and the Authority, the Owner's Project Manager may terminate this Contract:

- a. if the Owner, within thirty (30) days following written notice from the Owner's Project Manager of any material default by the Owner under the Contract, shall have failed to cure such default; or
- b. if, after the Owner's Project Manager has performed all services required during any phase prior to construction, at least six (6) months have elapsed without receipt by the Owner's Project Manager of approval to proceed with the next phase of the Project, provided the

delay was not the fault of the Owner's Project Manager. This provision shall not apply to a Owner's Project Manager who has received a notice of suspension pursuant to Article 11.2.

- c. Upon a proper termination by the Owner's Project Manager, the Owner's Project Manager shall be compensated as provided in 11.3.1 above regarding termination without cause.

## **ARTICLE 12: NOTICES**

12.1 Any notice required to be given by the Owner to the Owner's Project Manager, or by the Owner's Project Manager to the Owner, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the Owner at the addresses indicated on page one.

## **ARTICLE 13: INDEMNIFICATION OF OWNER AND AUTHORITY**

13.1 With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall indemnify and hold harmless the Owner, the Authority and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner or the Authority to the extent caused by the negligence of or the breach of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subcontractors.

13.2 With respect to non-professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, the Authority and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner or the Authority arising out of or resulting from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and caused by an act or omission of the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subcontractors.

## **ARTICLE 14: INSURANCE**

14.1 Worker's Compensation Insurance: The Owner's Project Manager shall, before commencing performance of this Contract, provide, by insurance, for the payment of compensation and the furnishing of other benefits in accordance with General Laws, Chapter 152, as amended, to all persons employed by the Owner's Project Manager and shall continue such insurance in full force and effect during the term of the Contract.

14.2 General Liability Insurance: The Owner's Project Manager shall obtain at its own expense, and have in full force before commencing services hereunder, and maintain at all times while services are performed hereunder, Comprehensive General Liability Insurance, including contractual liability coverage, providing for a combined single limit of \$1 million for bodily injury, death and property damage.

14.3 Automobile Insurance: The Owner's Project Manager shall obtain at its own expense, and have in full force before commencing services hereunder, and maintain at all times while services are performed

hereunder, Automobile Liability Insurance providing limits of not less than \$500,000 per person and \$100,000 per occurrence.

14.4 **Professional Liability:** The Owner's Project Manager shall obtain at its own expense, and have in full force before commencing services hereunder, and maintain at all times while services are performed hereunder and for a period of six years thereafter, Professional Liability Insurance providing limits of at least \$1 million per claim and in the aggregate.

14.5 All insurance shall be procured through a company or companies reasonably acceptable to the Owner and Authority. General Liability and Automobile Insurances shall include the Owner and Authority as additional insureds. Prior to commencement of the services, the Owner's Project Manager shall provide Certificates of Insurance evidencing the foregoing and specifying that the Owner and Authority must be given thirty (30) days notice of cancellation, termination or alteration of the policies. All Subcontractors shall maintain Comprehensive General Liability Insurance similar to the above requirements.

## **ARTICLE 15: REGULATORY AND STATUTORY REQUIREMENTS**

15.1 **Truth-in-Negotiations Certificate:** If the Owner's Project Manager's fee is negotiated, by signing this Contract, the Owner's Project Manager hereby certifies to the following:

15.1.1 Wage rates and other costs used to support the Owner's Project Manager's compensation are accurate, complete, and current at the time of contracting; and

15.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.

15.2 The person signing this contract certifies, as a principal or director of the Owner's Project Manager, that the Owner's Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no consultant to or subcontractor for the Owner's Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner's Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner's Project Manager or subcontractor of a contract by the Owner's Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner's Project Manager, has been retained or hired by the Owner's Project Manager to solicit for or in any way assist the Owner's Project Manager in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this.

15.3 **Revenue Enforcement and Protection Program (REAP):** Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the firm and/or individuals in the firm are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

15.4 **Interest of Owner's Project Manager:** The Owner's Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Agreement or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Agreement, no person having any such interest shall be employed by the Owner's Project Manager; and 3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the Owner.



15.5 Equal Opportunity: The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and MGL c.151B.

15.6 Certification of Non-Collusion: The signatory certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

15.7 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.

15.8 Venue and Waiver of Jury: Any suit by either party arising under this Contract shall be brought only in the Superior Court in the county where the Project is located. The parties hereto waive any argument that this venue is not appropriate or that the forum is inconvenient. The parties hereto waive all rights, if any, to a jury trial in any dispute arising under this Contract.

- END -

## **ATTACHMENT A**

### **PAYMENT SCHEDULE**

In consideration of Owner's Project Manager's delivery of Basic Services, the Owner shall pay the Owner's Project Manager on an hourly basis, up to a total fee that shall not exceed **\$[insert total fee amount]**. The **\$[insert total fee amount]** fee is a cap for Basic Services related to this Contract, and the actual amount paid by the Owner for Basic Services required during the duration of this Contract may be an amount less than **\$[insert total fee amount]**. The Owner's Project Manager shall invoice the Owner based on hours worked pursuant to this Contract, according to the hourly rates below and the schedule set forth below. During the course of this Contract, the rates in effect shall not be increased above those delineated in the following table:

#### **Hourly Rate Schedule**

**Title**

**Rate/Hr.**

The Owner's Project Manager shall perform the Services in accordance with the following Schedule:

<b><u>Project Phase</u></b>	<b><u>Not-to-Exceed Fee</u></b>	<b><u>Completion Date</u></b>
Pre-Design		
Schematic Design Phase		
Design Development Phase		
Construction Document Phase		
Sub-Bidder/General Bidder Prequalification		
Bidding Phase		
Substantial Completion of Construction		
Final Completion of Construction		
Designer and Contractor Evaluation		
Final Installment		